



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2011-0556; FRL- 9669-5 ]

#### **Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ohio; Determination of Clean Data for the 2006 24-Hour Fine Particulate Standard for the Steubenville-Weirton Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is making a final determination regarding the two-state Steubenville-Weirton, Ohio-West Virginia nonattainment area (hereafter referred to as the “Steubenville-Weirton Area” or “Area”) for the 2006 24-hour fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS). EPA is determining that the Steubenville-Weirton Area has attained the 24-hour 2006 PM<sub>2.5</sub> NAAQS. This determination is based upon complete, quality assured, and certified ambient air monitoring data showing that this area has monitored attainment of the 24-hour 2006 PM<sub>2.5</sub> NAAQS based on the 2008 – 2010 data. EPA’s determination suspends the obligation of Ohio and West Virginia to submit, with respect to this area, attainment demonstrations, associated reasonably available control measures (RACM), reasonable further progress plans, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the 2006 PM<sub>2.5</sub> standard for so long as the Area continues to meet the 24-hour 2006 PM<sub>2.5</sub> NAAQS.

**DATES:** Effective Date: This final rule is effective on [insert date 30 days from date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2011-0556**. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** In Region III, Asrah Khadr, Office of Air Program Planning, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2023. The telephone number is (215) 814-2071. Ms. Khadr can also be reached via electronic mail at [khadr.asrah@epa.gov](mailto:khadr.asrah@epa.gov). In Region V, Carolyn Persoon, Air Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604-3507. Ms. Persoon's telephone number is (312) 353-8290. Ms. Persoon can also be reached via electronic mail at [persoon.carolyn@epa.gov](mailto:persoon.carolyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. What Action is EPA Taking?**

**II. What is the Effect of this Action?**

### **III. Summary of Public Comment and EPA Response**

### **IV. Statutory and Executive Order Reviews**

#### **I. What Action is EPA Taking?**

EPA is making a final determination that the Steubenville-Weirton Area has attained the 24-hour 2006 PM<sub>2.5</sub> NAAQS. This determination is based upon complete, quality assured, and certified ambient air monitoring data showing that this area has monitored attainment of the 2006 PM<sub>2.5</sub> NAAQS based on data for 2008-2010.

On October 4, 2011 (76 FR 61291), EPA proposed its determination of attainment for the Steubenville-Weirton Area. A discussion of the rationale behind this determination and the effect of the determination were included in the notice of proposed rulemaking (NPR). One adverse comment was submitted in response to EPA's October 4, 2011 NPR (76 FR 61291). A summary of the comment and EPA's response is provided in section III of this document.

#### **II. What is the Effect of this Action?**

Under the provisions of EPA's PM<sub>2.5</sub> implementation rule (40 CFR 51.1004(c)), the requirements for the States of Ohio and West Virginia to submit, for the Steubenville-Weirton Area, an attainment demonstration and associated RACM (including reasonably available control technology (RACT)), a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 2006 PM<sub>2.5</sub> NAAQS are suspended for so long as the Area continues to meet the 24-hour 2006 PM<sub>2.5</sub> NAAQS. If EPA subsequently determines that this Area violates the 24-hour 2006 PM<sub>2.5</sub> NAAQS, the basis for the suspension of the specific

requirements, set forth at 40 CFR 51.1004(c), would no longer exist and this area would thereafter have to address the pertinent requirements.

This action, does not constitute a redesignation of the Steubenville-Weirton Area to attainment of the 24-hour 2006 PM<sub>2.5</sub> NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, this action does not involve approving maintenance plans for the Area as required under section 175A of the CAA, nor does it find that the Area has met all other requirements for redesignation. Even after a determination of attainment by EPA, the designation status of the Steubenville-Weirton Area remains nonattainment for the 24-hour 2006 PM<sub>2.5</sub> NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Steubenville-Weirton Area.

### **III. Summary of Public Comment and EPA Response**

**Comment:** An Ohio resident expressed concern for the air quality in the Steubenville-Weirton Area. The resident perceives the air quality to be poor and thus questioned how this Area will be free from requirements to create plans for air quality improvement. The resident also proposed that areas with air quality problems should be subject to more stringent standards.

**Response:** Since 2006, the States of Ohio and West Virginia, as well as the Federal government, have implemented various measures that have resulted in cleaner air in the Steubenville-Weirton Area, including, the nitrogen oxides (NO<sub>x</sub>) SIP Call which addressed pollutants that can result in acid rain; mobile source engine standards leading to a decrease in NO<sub>x</sub> and direct PM<sub>2.5</sub>; fuel standards decreasing sulfur dioxide (SO<sub>2</sub>); as well as rules affecting SO<sub>2</sub> and NO<sub>x</sub> from power

plants. These and other measures have resulted in a decrease in monitored PM<sub>2.5</sub> concentrations in the Steubenville-Weirton Area. Questions regarding the stringency of existing air standards are not relevant to this determination. The sole concern of this determination is whether the Area has attained the 2006 PM<sub>2.5</sub> 24-hour standard. Since 2008, based on complete, quality assured and certified data, this Area has monitored attainment of that standard, set by EPA to protect human health and the environment. The Area continues to attain the standard. At this time, therefore, no additional attainment planning or measures related to attainment of the 2006 PM<sub>2.5</sub> 24-hour standard are needed. In the future, should EPA determine that a violation of the standard occurs, the States of Ohio and West Virginia will then be required to submit an attainment demonstration, associated RACM, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard.

#### **IV. Statutory and Executive Order Reviews**

##### **A. General Requirements**

This action merely makes an attainment determination based on air quality data and does not impose any additional requirements. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory

Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This clean data determination for the 24-hour 2006 PM<sub>2.5</sub> NAAQS for the Steubenville-Weirton Area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Sulfur oxides, Nitrogen oxides, Reporting and recordkeeping requirements.

Dated: February 15, 2012

W. C. Early, Acting  
Regional Administrator,  
Region III.

Dated: April 18, 2012

Susan Hedman,  
Regional Administrator,  
Region V.



40 CFR Part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart KK--Ohio

2. In § 52.1880, paragraph (r) is added to read as follows:

§ 52.1880      Control strategy: Particulate matter.

\*           \*           \*           \*           \*

(r) Determination of Attainment. EPA has determined, as of [insert date of publication in the Federal Register], that based on 2008 to 2010 ambient air quality data, the Steubenville-Weirton nonattainment area has attained the 24-hour 2006 PM<sub>2.5</sub> NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the

standard for as long as this area continues to meet the 24-hour 2006 PM<sub>2.5</sub> NAAQS.

Subpart XX--West Virginia

3. In § 52.2526, paragraph (g) is added to read as follows:

§ 52.2526 Control strategy: Particulate matter.

\* \* \* \* \*

(g) Determination of Attainment. EPA has determined, as of [insert date of publication in the Federal Register], that based on 2008 to 2010 ambient air quality data, the Steubenville-Weirton nonattainment area has attained the 24-hour 2006 PM<sub>2.5</sub> NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 24-hour 2006 PM<sub>2.5</sub> NAAQS.

[FR Doc. 2012-11184 Filed 05/11/2012 at 8:45 am; Publication Date: 05/14/2012]